



DEPARTMENT OF THE ARMY  
NEW YORK DISTRICT CORPS OF ENGINEERS

JACOB K. AVITZ FEDERAL BUILDING  
NEW YORK, N.Y. 10278-0020

**RECEIVED**

JUL - 6 2004

TOWN OF NEW WINDSOR  
ATTORNEY'S OFFICE

cc: P/B Chaumal  
Attorney  
Supervisor

cc McGoe

JUL 01 2004

REPLY TO  
ATTENTION OF:  
Regulatory Branch

SUBJECT: Permit Application Number 2002-01266-YS  
by RPA Associates, LLC

Anthony P. Russo  
Environmental Compliance Services, Inc.  
226 East Main Street  
Middletown, New York 10940-4035

**RECEIVED**

JUL 6 2004

TOWN OF NEW WINDSOR  
TOWN CLERK'S OFFICE

Dear Mr. Russo:

On June 20, 2002, the New York District Corps of Engineers received a request for a Department of the Army jurisdictional determination and authorization for the above referenced project. This request was made by Environmental Compliance Services, Inc., as consultant for RPA Associates, LLC. The site consists of approximately 31.62 acres, in the Hudson River Basin, located at the end of Park Hill Drive in the Town of New Windsor, Orange County, New York. The proposed project would involve the construction of a 28-lot residential subdivision to be known as Patriot Estates and a 96-unit condominium development to be known as Patriot Bluff.

In the letter received on June 20, 2002, your office submitted a proposed delineation of the extent of waters of the United States within the subject property. A site inspection was conducted by a representative of this office on October 30, 2002, in which it was agreed that changes would be made to the delineation and that the modified delineation would be submitted to this office. On May 19, 2004, this office received the modified delineation.

Based on the material submitted and the observations of the representative of this office during the site visit, this site has been determined to contain jurisdictional waters of the United States based on: the presence of wetlands determined by the occurrence of hydrophytic vegetation, hydric soils and wetland hydrology according to criteria established in the 1987 "Corps of Engineers Wetlands Delineation Manual," Technical Report Y-87-1 that are either adjacent to or part of a tributary system; and the presence of a defined water body (e.g. stream channel, lake, pond, river, etc.) which is part of a tributary system.

These jurisdictional waters of the United States are shown on the drawing entitled "Lands Of RPA Associates, LLC Epiphany Drive Town of New Windsor, N.Y.", Sheet Number 1 of 8, prepared by Shaw Engineering, dated December 1, 2003, and last revised May 5, 2004. This drawing indicates that there are two (2) principal wetland areas on the project site which are part of a tributary system, and are considered to be waters of the United States.

The first wetland (Wetland Area "A") is located in the northeastern corner of the property and is approximately 2.72 acres within the subject property. The second wetland (Wetland Area "B") is located in the southwestern corner of the property and is approximately 4.03 acres within the subject property. These wetlands are considered to be above the headwaters.

This determination regarding the delineation shall be considered valid for a period of five years from the date of this letter unless new information warrants revision of the determination before the expiration date. Enclosed is a Notification of Administrative Appeal Options which provides information on your acceptance of this approved jurisdictional determination.

This delineation/determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request. This delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

The drawings entitled "Lands Of RPA Associates, LLC Epiphany Drive Town of New Windsor, N.Y.", Sheet Numbers 1 of 8 through 3 of 8 prepared by Shaw Engineering, Sheet Numbers 4 of 8 through 8 of 8 prepared by Environmental Compliance Services, Inc., Sheets 1, 2 and 4 through 7 dated December 1, 2003, Sheet 3 dated April 8, 2003, Sheet 8 dated February 26, 2004, and Sheets 1 through 8 last revised May 5, 2004, indicate that the total impacts to waters of the United States would involve the discharge of fill material into approximately 0.48 acres of wetlands. Approximately 0.64 acres of wetlands would be established as mitigation. In addition, approximately 0.01 acres of wetlands would be excavated for the installation of a water line, then returned to pre-construction contours.

Based on the information submitted to this office, and accomplishment of notification in accordance with the applicable federal requirements, our review of the project indicates that an individual permit is not required. It appears that the activities within the jurisdiction of this office could be accomplished under Department of the Army Nationwide General Permit Numbers 12 and 39. The nationwide permits are prescribed as an Issuance of Nationwide Permits in the Federal Register dated January 15, 2002 (67 FR 2020). The work may be performed without further authorization from this office provided the activity complies with the permit conditions listed in Section B, Nos. 12 and 39, Section C, any applicable New York District regional conditions, the following special conditions, and any applicable regional conditions added by the State of New York, copies enclosed.

### Special Conditions

(A) Prior to the initiation of any jurisdictional activity, the permittee shall resubmit the drawing entitled "Lands Of RPA Associates, LLC Epiphany Drive Town of New Windsor, N.Y.", Sheet Number 6 of 8, prepared by Environmental Compliance Services, Inc., dated December 1, 2003, and last revised May 5, 2004, showing all proposed grades within "Wetland Creation Area - 2" at or below the "Seasonal High Water Table" line, as shown on the cross section portion of the drawing. This plan shall be submitted within 30 days of the date of this letter. No work within jurisdictional waters of the United States, including the wetlands mitigation plan shall be initiated until the permittee receives notice from the New York District Corps of Engineers, indicating that the permittee has complied with the requirements of this special condition.

(B) The permittee shall place in its deed conveying each individual lot within the subdivision which contains waters of the United States, including wetlands, a clause notifying the grantee that they may need authorization from the Corps of Engineers prior to the grantee's undertaking of any work in waters of the United States. The clause must also state that the grantee may be required to provide mitigation in the form of newly established wetland to offset possible adverse impacts associated with the grantee's undertaking of any further jurisdictional activities. One copy of each of the above referenced drawings shall be provided to each lot owner.

(C) The permittee shall provide to this office annual reports on the status of the mitigation activities, prepared during the growing season, no later than October 31 in each of the following five (5) years after initiation of the activities authorized by this letter. These reports shall include the following at a minimum:

i. All plant species, along with their estimated relative frequency and percent cover, shall be identified by using plots measuring 10 feet by 10 feet with at least one representative plot located in each of the habitat types within the mitigation site. The location of each plot shall be identified on the plan view engineering drawing.

ii. Vegetation cover maps, at a scale of one inch equals 100 feet, or larger scale, shall be prepared for each growing season.

iii. Photographs showing all representative areas of the mitigation site/s shall be taken at least once each year during the period between 1 June and 15 August.

iv. Surface water and groundwater elevations in representative areas of the mitigation site/s shall be recorded twice a month during April through September of each year. The location of the monitoring well or gauge shall be shown on the plan view engineering drawing.

(D) All grading and planting in conjunction with the wetlands mitigation work shall be completed prior to the completion of the discharge of fill authorized herein.

(E) The permittee shall ensure that all plantings in conjunction with the mitigation effort shall have an eighty-five (85) percent survival and/or coverage rate which must be met or exceeded at the end of the second growing season following the initial planting/seeding of each phase. If the eighty-five (85) percent survival rate is not met at the end of the second growing season following each phase, the permittee shall take all necessary measures to ensure the level of survival by the end of the next growing season, including re-planting and re-grading if necessary.

(F) The permittee shall ensure that no mowing of the mitigation area shall occur.

(G) The permittee shall undertake the authorized filling activities in a manner aimed at reducing impacts upon the general environment. In addition, the permittee shall not stockpile fill or other materials in a manner conducive to erosion, or in areas likely to cause high turbidity runoff during storm events. All exposed soils shall be re-vegetated in a timely manner to further reduce potential effects. The permittee shall also fence off all wetlands and other sensitive ecological areas during construction periods to prevent equipment and personnel from entering these areas.

(H) The permittee shall secure a conservation easement or deed restriction on the wetland mitigation site to guarantee its preservation for wetland and wildlife resources. Copies of the instrument(s) effecting such easement shall be submitted to the New York District Corps of Engineers for approval prior to execution, and the instrument(s) shall be executed and recorded with the Orange County Registrar of Deeds within one year following the initial plantings/seedings of the mitigation site.

(I) The permittee shall assume all liability for accomplishing the corrective work should the New York District determine that the compensatory mitigation has not been fully satisfactory. If the New York District does not find the mitigation satisfactory, an extension of monitoring time may be required to cover any necessary remedial work.

This determination covers only the work described in the submitted material. Any major changes in the project may require additional authorizations from the New York District.

Care should be taken so that construction materials, including debris, do not enter any waterway to become drift or pollution hazards. You are to contact the appropriate state and local government officials to ensure that the subject work is performed in compliance with their requirements.

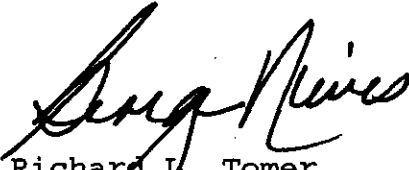
This verification is valid for a period of two years from the date of this letter, unless the nationwide permit is modified, suspended or revoked. This verification will remain valid for two years from the date of this letter if the activity complies with the terms of any subsequent modifications of the nationwide permit authorization. If the nationwide permits are suspended, revoked, or modified in such a way that the activity would no longer comply with the terms and conditions of a nationwide permit, and the proposed activity has commenced, or is under contract to commence, the permittee shall have 12 months from the date of such action to complete the activity.

This authorization is conditional on the applicant's receipt of the required water quality certificate or waiver from the New York State Department of Environmental Conservation (NYSDEC). No work may be accomplished until the required approval from NYSDEC has been obtained.

Within 30 days of the completion of the activity authorized by this permit and any mitigation required by this permit, you are to sign and submit the attached compliance certification form to this office.

If any questions should arise concerning this matter, please contact Brian A. Orzel, of my staff, at (212) 264-0183.

Sincerely,

FOR/   
Richard L. Tomer  
Chief, Regulatory Branch

Enclosures

cf: NYSDEC - Region 3  
Town of New Windsor